

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION NO. 1378 of 2019**

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BHAVESHBHAI JETHALAL DAMA

Versus

STATE OF GUJARAT

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Appearance:

MR HRIDAY BUCH(2372) for the Applicant(s) No. 1,2,3,4,5,6

MR. J.K. SHAH, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE B.N. KARIA**Date : 17/10/2019****ORAL ORDER**

1. The applicant has challenged the impugned judgment and order dated 19.08.2019 passed by the learned 11th Additional Sessions Judge, Bardoli below Exh.9 in Sessions Case No.24 of 2017(for short "the impugned order") wherein the application preferred by the present applicants under Section 227 of the Criminal Procedure Code,1973 was rejected.

2. Heard learned advocate for the applicants.

3. Learned advocate for the applicants submits that impugned order is *ex facie*, erroneous, contrary to law, settled legal position. That, there was no iota of evidence in the charge-sheet or other documents produced on record by the prosecution that there was any intention or knowledge for the punishment under Section 304, I.P.C. on the part of the applicants. That, while

framing charge under Section 304 of I.P.C., prima facie indicates that accused had done an overt act which had caused death with at least such a knowledge that he was by such an act likely to cause death, which is completely absent in the facts of the present case.

4. The learned Sessions Judge has completely ignored the provisions and dismissed the application for discharge under Section 227 of the Criminal Procedure Code. In support of the arguments learned counsel has relied upon the case reported in **SCC 1996 volume 6 page 129, 2018 on line SCC 311 and Special Criminal Application and (quashing) No.9248 of 2018, Gujarat High Court** and it was requested by learned counsel for the applicants to pass necessary order.

5. Issue requires consideration.

6. Learned APP has strongly objected the submissions made by learned counsel for the applicants and submitted that intention as well as knowledge of the present applicants was clearly found from the record and observation of the learned Judge. It is further submitted that the attendance sheet was prepared by the present applicants showing that the training was given to the deceased and their signatures were taken, it comes out from the record that on account of clear knowledge and intention of causing accident without giving any training to the deceased as

well as injured, they were permitted to work in the factory. Hence, prayer for interim relief made by learned counsel for the applicants can not be granted.

7. Considering the submissions made by learned counsel for the applicants as well as learned APP notice be issued for final disposal, making it returnable on 28.11.2019.

8. Relief, as sought for, in terms of Para 6(C) of the Criminal Revision Application stands granted. The impugned judgment and order passed by the Trial Court shall be suspended till the next date of hearing.

(B.N. KARIA, J)

SUYASH